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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/661,848

Applicant(s)

MOEHLNBROCK ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 16 August 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.


Continuation of 10. Other (including any explanation in support of the above items): In regard to item 4, the Summary of Claimed Subject Matter must be amended to correct the following inconsistencies between Appellant's identification of the claimed subject matter and the portions of the specification and drawings referred to in the Summary of Claimed Subject Matter:

the Summary of Claimed Subject Matter identifies the second microporous layer as item 13, which contradicts the specification, which identifies the second microporous layer as item 20. See page 17, line 29-page 18, line 2 of the specification. Furthermore, item 13 is shown as a component of the first microporous layer (item 12) in Fig. 2 (in addition to being shown as a component of the second microporous layer [item 20] in Fig. 2), so Appellant's characterization of item 13 in the Brief as the second microporous layer makes it unclear which components shown in Fig. 1 and 2 Appellant considers to correspond to the claimed elements;

furthermore, in regard to Appellant's summary of claim 14, Appellant refers to Fig. 1 and 6 and refers to item 52, which is not shown in either Fig. 1 or 6 (reference character 52 does not appear in Fig. 6). In addition, Appellant refers to "package 59" in the summary of claim 14, but reference character 59 does not refer to a package, but to the "upper end of sealed pouch" (page 24, line 12 of specification); the reference number that would refer to a package is 60, due to the characterization of "pouch 60" as being "immediately packed with product 52" (page 24, lines 7-8 of specification, also see lines 13 and 16 of page 24) or 66 (page 24, lines 25-27). Appellant cited page 23, line 27-page 24, line 29 (a portion of the specification which discusses both Fig. 5 and 6) as corresponding to the claimed subject matter of claim 14. Top of page 4 of Brief.

37 CFR 41.37(c)(1)(vii) requires that "[a]ny claim argued separately should be placed under a subheading identifying the claim by number". Therefore, the arguments that are separately directed to claim 10 on page 10 of the Brief should be placed under a subheading, as required by 37 CFR 41.37(c)(1)(vii).

Walter Aughenbaugh



11/21/07